

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
ELEMENT ALUMINUM, LLC)	
)	
RESPONDENT)	CASE NO. WPC07-0207

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Tennessee Division of Water Pollution Control (hereinafter the "division") by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "department").

II.

Element Aluminum, LLC (hereinafter the "Respondent") operates an industrial facility in Madison County at 2410 F.E. Wright Drive, Jackson, Tennessee, 38305 (hereinafter the "site"). Service of process may be made on the Respondent through, Delwyn Forrest, 2410 DR. F.E. Wright Drive, Jackson, Tennessee, 38305.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (the “Act”) has occurred, or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (“Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director of the Division of Water Pollution Control any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a “person” as defined at T.C.A. §69-3-103(20), and as hereinafter stated, the Respondent has violated the Act.

V.

T.C.A. §69-3-108 requires a person to obtain coverage under permit prior to discharging any substance to waters of the state, or to a location from which it is likely that the discharged substance will move into waters. Coverage under the Tennessee

Multi-Sector Permit for Storm Water Discharges Associated with Industrial Activity (hereinafter the “TMSP”) may be obtained by submittal of a Notice of Intent (NOI).

VI.

Dyer Creek and its unnamed tributaries, referred to herein, are “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, “Use Classifications for Surface Waters, et al,” is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, Dyer Creek and its unnamed tributaries have been classified for the following uses: fish and aquatic life, livestock watering and wildlife, recreation, and irrigation. Additionally, Dyer Creek is listed as impaired for loss of biological integrity due to siltation and physical substrate habitat alterations resulting from channelization.

FACTS

VII.

On May 18, 2007, personnel from the division of Solid Waste Management conducted a complaint investigation at the site. The complainant alleged that operations conducted by the Respondent created a pool of oil on the grounds at the site. Upon inspection, it was revealed that in fact there was a pool of spilled mineral oil outside of a building on the site. Personnel from the Solid Waste Management division notified Water Pollution Control about the spilled oil.

VIII.

On June 22, 2007, following a June 21, 2007, site visit the Water Pollution Control (WPC) division issued a Notice of Violation (NOV) to the Respondent. The inspection revealed that along with the mineral oil spill, industrial activities were being conducted at the site. The NOV required the Respondent to obtain permit coverage under the TMSP by submitting a Notice of Intent (NOI) and a Storm Water Pollution Prevention Plan (SWPPP) on or before June 29, 2007. The NOV also requested that within (30) THIRTY DAYS the Respondent submit a SWPPP to the Jackson field office containing any Best Management Practices (BMP) or physical control structures which the company planned to initiate or install to control spills or releases at the site. Furthermore, the division advised the Respondent to take any steps necessary to prevent contamination of future storm water runoff at the site.

IX.

The Respondent submitted a NOI to obtain TMSP coverage and the division issued coverage effective on July 7, 2007.

X.

On July 11, 2007, division personnel returned to the facility to inspect conditions at the site following a rain event. Division personnel observed that mineral oil remained pooled in the spill area and that contaminated soil and rock remained adjacent to the building. Division personnel observed a trail of stained vegetation in a drainage ditch originating from the pool of spilled oil at the site. Additionally, oil skim was observed on stormwater pools, and vegetation in a ditch of a neighboring property was discolored

from the oil. The observations confirmed that the Respondent had allowed the oil to move off site.

XI.

On July 24, 2007, the division issued a NOV for violations observed during the July 11, 2007, site visit.

XII.

On August 21, 2007, division personnel performed an inspection at the site. Division personnel noted that the contaminated area had been cleaned, seeded, and covered with straw. However, since the Jackson area was experiencing a prolonged drought and the Respondent did not water the area, the seed did not germinate. In addition, another potential source of contamination was discovered in the back of the press building. The floor in the area was stained black with oil and free oil was visible on the floor. Some oil stained soil was noticed outside the building along the base of the wall. The Respondent indicated that he would address the housekeeping in that area to prevent a potential problem.

VIOLATIONS

XIII.

By failing to obtain permit coverage for the site, as described herein, the Respondent has violated T.C.A. Sections 69-3-108(a) and 69-3-114(b), which states

Section 69-3-108:

- (a) Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a

publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

Section 69-3-114(b)

- (b) In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

XIV.

By failing to comply with the terms and conditions of an existing TNCCGP, as described herein, the Respondent has violated T.C.A. Sections 69-3-114(b), which states:

Section 69-3-114(b)

- (b) In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

ORDER AND ASSESSMENT

XV.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. The Respondent shall, within 30 days, clean any remaining contaminated soils, vegetation, or debris at the facility. The proper disposal of this contaminated solid waste shall be documented and submitted to Jackson Environmental Field Office (J-EFO) at, 1625 Hollywood Drive, Jackson, Tennessee, 38305.
2. The Respondent shall, within 30 days of receipt of this Order, implement appropriate Best Management Practices (BMPs) to assure compliance with the terms and conditions of the permit. These BMPs shall be approved by the Water Pollution Control Manager in the (J-EFO) and documentation that the BMPs have been implemented is to be sent to the Water Pollution Control Manager in the (J-EFO), and to the manager of the Enforcement and Compliance Section (E&C) of Water Pollution Control, 6th Floor, L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534.
3. The Respondent shall maintain appropriate BMPs to assure the elimination of pollutants in storm water discharges associated with industrial activity at the site and to assure compliance with the terms and conditions of the permit.
4. The Respondent is hereby assessed a CIVIL PENALTY in the amount of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00), payable as follows:

- a. The Respondent shall pay a CIVIL PENALTY to the Department, hereby assessed, of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) to be paid to the division within THIRTY (30) DAYS of receipt of this Order and Assessment.
- b. The Respondent shall pay a CIVIL PENALTY to the Department, hereby assessed, of TWO THOUSAND DOLLARS (\$2,000.00) to be paid to the division within THIRTY (30) DAYS of default if, and only if, the Respondent fails to comply with Item 1 above in a timely manner.
- c. The Respondent shall pay a CIVIL PENALTY to the Department, hereby assessed, of TWO THOUSAND DOLLARS (\$2,000.00) to be paid to the division within THIRTY (30) DAYS of default if, and only if, the Respondent fails to comply with Item 2 above in a timely manner.
- d. The Respondent shall pay a CIVIL PENALTY to the Department, hereby assessed, of ONE THOUSAND DOLLARS (\$1,000.00) to be paid to the division within THIRTY (30) DAYS of default if, and only if, the Respondent fails to comply with Item 3 above in a timely manner.

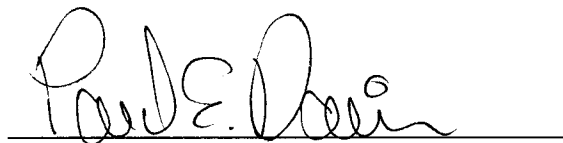
The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The Director of the Division of Water Pollution Control may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received a minimum of 30 days in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the

anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Further, the Respondent is advised that the foregoing Order is in no way to be construed as a waiver, expressed or implied, of any provision of law or regulations. However, compliance with the Order will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the Director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 8th day of October 2007.

A handwritten signature in cursive script, reading "Paul E. Davis", is written over a horizontal line.

PAUL E. DAVIS

Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence

at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payments of the civil penalty shall be made payable to the “Treasurer, State of Tennessee,” and sent to the Division of Fiscal Services-Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, at 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. Please write your case number on all payments and all correspondence concerning this matter.